

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-100522
	:	TRIAL NO. B-0906607
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
FRANKIE HARTSFIELD,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Frankie Hartsfield appeals the conviction entered upon his guilty plea to aggravated vehicular homicide, a second-degree felony.² The trial court imposed the agreed sentence of four years' incarceration.

At the plea hearing, the state reported that, on or about July 29, 2009, Hartsfield, while operating a motor vehicle, had caused the death of Nevora Johnson as a proximate result of committing a violation of R.C. 4511.19(A).

Pursuant to *Anders v. California*³ and its progeny,⁴ Hartsfield's appointed appellate counsel has advised this court in a no-error brief that, after a thorough review of the record, he has concluded that this appeal is frivolous. He has moved this court for

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² R.C. 2903.06(A)(1).

³ (1967), 386 U.S. 738, 87 S.Ct. 1396.

⁴ *Freels v. Hills* (C.A.6, 1988), 843 F.2d 958; *In re Booker* (1999), 133 Ohio App.3d 387, 728 N.E.2d 405; *State v. Williams*, 183 Ohio App.3d 757, 2009-Ohio-4389, 918 N.E.2d 1043.

permission to withdraw as counsel. And he has submitted an affidavit stating that he has communicated to Hartsfield his conclusion, that he has offered to raise any issues that Hartsfield may wish the court to consider, and that Hartsfield, after sufficient time to make the offer meaningful, has not provided grounds for this appeal.

Counsel now requests that this court independently examine the record to determine whether the appeal is wholly frivolous.⁵ We have done so, and we concur in counsel's conclusion that the proceedings below were free of prejudicial error. We, therefore, overrule counsel's motion to withdraw from his representation of Hartsfield and affirm the judgment of the trial court.

We note, however, that the indictment and the judgment of conviction incorrectly designate Hartsfield's offense as a violation of subdivision (b) of R.C. 2903.06(A)(1), instead of a violation of subdivision (a). But the language of the indictment and the bill of particulars makes it clear that Hartsfield was charged with aggravated vehicular homicide in violation of R.C. 2903.06(A)(1)(a), which includes a violation of R.C. 4511.19, and the plea hearing demonstrates that Hartsfield entered a guilty plea to facts that established the R.C. 2903.06(A)(1)(a) violation. Thus, we conclude that the erroneous statutory reference is a clerical error that does not raise an issue arguable on the merits, and that the error in the judgment of conviction may be corrected by the trial court in a nunc pro tunc entry.⁶

Although we hold that this appeal is frivolous under App.R. 23 and without "reasonable cause" under R.C. 2505.35, we refrain from taxing costs and expenses against Hartsfield because he is clearly indigent.

⁵ See *Anders* at 744.

⁶ *State ex rel. Womack v. Marsh*, ___ Ohio St.3d ___, 2011-Ohio-229, ___ N.E.2d ___, ¶13, citing *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶18-19; Crim.R. 36.

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A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HENDON and CUNNINGHAM, J.J.

To the Clerk:

Enter upon the Journal of the Court on March 9, 2011
per order of the Court _____.
Presiding Judge